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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

ROGER D. MULLINS, Plaintiff and Respondent, v. CALFARM INSURANCE CO. et al., Defendants and Appellants.	C041231 (Super. Ct. No. 00AS02142)

After being hired by defendant CalFarm Insurance Company (CalFarm), plaintiff Roger D. Mullins relocated to the Sacramento area from Delaware. Unbeknownst to Mullins, during the hiring process, CalFarm's parent company was deep in negotiations with defendant Nationwide Insurance Company (Nationwide) to sell CalFarm. CalFarm announced the sale on the day Mullins reported for work. Following the sale, CalFarm eliminated Mullins's position.

Labor Code section 970 prohibits employers and their agents from inducing employees to relocate to accept employment by way of knowingly false representations.[1] Mullins filed suit against defendants, alleging breach of contract, fraud, negligent misrepresentation, and violation of section 970. A jury found that defendants violated section 970 and awarded $1.1 million in economic damages and $200,000 in emotional distress damages. The court doubled the award pursuant to section 972.

Defendants appeal, contending: (1) Mullins's section 970 claim was time barred; (2) the trial court erred in finding defendants' failure to disclose the sale negotiations established liability under section 970; (3) the verdict is not supported by substantial evidence; and (4) Mullins's "at-will" employment contract bars his section 970 claim. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mullins filed suit on April 20, 2000, alleging breach of contract, fraud and deceit, negligent misrepresentation, and violation of section 970. Mullins based all causes of action on his hiring by CalFarm and subsequent termination after Nationwide acquired CalFarm. The complaint sought a doubling of damages pursuant to section 972.

Defendants moved for summary adjudication. The court granted the motion as to the breach of contract cause of action. The court found Mullins had an express at-will employment contract with CalFarm.

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[1] All further statutory references are to the Labor Code unless otherwise indicated.

A lengthy jury trial followed. The testimony focused on two parallel events: the negotiations over the sale of CalFarm to Nationwide and Mullins's hiring by CalFarm. Mullins centered his section 970 claim on CalFarm's recruitment and hiring of him while engaged in negotiations to sell the business. According to Mullins, CalFarm and its agent, a recruiter, knew of the upcoming sale but neglected to inform their recruit of this potentially very important information. Unaware of the Sword of Damocles hanging above his head, Mullins left a secure position in Delaware, uprooted his family, and came west.

The Recruitment and Hiring of Mullins

Mullins testified regarding his former employment at Penn National Insurance in Delaware. According to Mullins, his position as director of material damage was secure. He was well liked and received excellent performance reviews. Mullins and his wife owned a home. His wife earned approximately $60,000 per year and was six months away from fully vesting at her job.

Keith Klein, a recruiter working for CalFarm, contacted Mullins in December 1998. Klein told Mullins about an opening in California paying $100,000 per year with potential bonuses and a company car. According to Klein, CalFarm was a very secure place to work. Klein touted his very good inside information regarding the inner workings of CalFarm.

Although intrigued, Mullins was also cautious. He felt his current position at Penn National was secure, and he felt less employable as he grew older. Mullins told Klein he wanted to work at least another 15 years and wanted any new position to be his last.

To alleviate these concerns, Mullins specifically asked Klein during their December 1998 and January 1999 conversations about any CalFarm involvement in merger or sale discussions. Klein told Mullins he had previously heard rumors of a potential sale, but the rumors had turned out to be unfounded. Klein also told Mullins there was no current sale or merger in the works.[2]

After Klein passed Mullins's resume on to CalFarm, Franklin Adams, who would supervise Mullins in the new position, contacted him. Adams told Mullins that CalFarm was an excellent place to work and the company was performing well financially. The CalFarm employee Mullins would replace also spoke with him, assuring him Adams was an honorable man and a good boss.

Mullins flew to California on January 7, 1999, for a series of interviews the following day. Mullins told Adams he did not like changing jobs and was looking for a secure environment. Adams responded that Mullins could expect to retire from CalFarm as long as he performed well.

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[2] At trial, Mullins testified: "I asked [Klein] if [CalFarm] was involved in any merger or sale. [¶] Q. What did he say? [¶] A. He said that it wasn't. He said that there had been rumors a few years ago that the Company was for sale, but there was no . . . substance to those rumors. It turned out not to be true. [¶] Q. Did he say anything else on the subject . . . [¶] . . . [¶] . . . of sales [or] mergers? [¶] A. No. He just said there was no . . . sale or merger in the works."

Mullins asked Adams whether CalFarm was currently considering a sale or merger. Adams told him it was not. Adams also told Mullins people in management did not leave the company.

During his interviews with five other CalFarm executives, Mullins again inquired about possible mergers or sales. Each executive assured him no such change was in the works and reiterated that CalFarm was a secure and good place to work.

At the end of the interview day, Adams offered Mullins the position. According to Mullins, if anyone during the interviews had mentioned a merger or sale of the company, he would not have taken the job. Mullins believed leaving a secure position in Delaware to move to California was a tremendous risk.

Mullins and Adams negotiated over compensation during January 1999. During this period, Adams never mentioned the pending sale. Any mention of a pending sale would have prevented Mullins's acceptance of the position. If anyone at CalFarm had suggested he delay his decision, he would have done so.

CalFarm sent an offer letter dated January 29, 1999. Mullins accepted the offer on February 3 or 4, 1999. The offer letter provided, in part: "It is understood that the employment relationship between Employee [Mullins] and the Company is at the mutual consent of both parties. Accordingly, either Employee or the Company can terminate the employment relationship 'at-will', at any time, with or without cause or advance notice." Mullins signed the offer letter, agreeing to the terms and conditions therein, but understood the "at-will" language in the contract to be "boilerplate" language required for employment in California.

Mullins began work at CalFarm on February 22, 1999, the day CalFarm publicly announced its sale to Nationwide. Stunned, Mullins asked Adams why he had not been told of the pending sale during the interview process. Adams replied he could not reveal the sale because of Security and Exchange Commission regulations and a confidentiality agreement Adams had signed.

Over the next few days, Adams continued to reassure Mullins, telling him not to worry, that everything would be fine. According to Adams, Nationwide left companies it acquired as "stand-alone" companies.

Klein also called and reassured Mullins following the announcement. According to Klein, the CalFarm and Nationwide boards of directors preapproved Mullins's hiring. Klein continued to call with reassuring comments over the ensuing weeks.

In March, Mullins and his wife listed their home for sale in Delaware. Mullins moved his furnishings to a San Francisco warehouse; Mullins's wife remained in Delaware until her employment benefits vested.

In April 1999 CalFarm fired Adams. In May 1999 Mullins sold the Delaware home and put the proceeds toward a down payment on a home in the Sacramento area. In Delaware, Mullins's wife was reluctant to relocate without further assurances from CalFarm. To alleviate her concerns, Mullins sent an electronic communication to CalFarm management inquiring about the security of his position.

CalFarm responded on July 1, 1999, eliminating Mullins's position as part of a postsale restructuring. CalFarm gave Mullins several options: take a claims manager position or a unit manager position at roughly half his current salary or move back to Delaware. If Mullins took the latter option, CalFarm would reimburse him for the deposit on his new home and for moving expenses.

Mullins faced a dilemma: the reduced salary would not meet the mortgage on the new Sacramento home, and the positions were comparable in salary and duties to positions Mullins had occupied 15 years before. If he stayed, his wife would give up a $60,000 per year secure job in Delaware to enable him to take a $60,000 per year job with no security in California.

Mullins termed the options presented by CalFarm a "disaster." He no longer had a home or a job in Delaware. His furniture sat in storage in San Francisco. His wife remained in Delaware. Mullins told CalFarm the options were unacceptable.

Pete Occhialini, a vice president of claims, told Mullins to protect his family. Occhialini said the whole problem could easily have been prevented if CalFarm had delayed hiring Mullins for a month. Then Mullins could have made an informed decision. Occhialini counseled Mullins to talk to an attorney.

CalFarm fired Mullins and refused to provide him with an office during his job hunt or to give him a letter of recommendation. Unable to find a position in the industry, Mullins eventually started his own business in truck and heavy equipment appraisal and adjustment.

Mullins had never been fired before. The firing devastated him and his family. He suffered chest and back pains and depression.

On cross-examination, Mullins stated he did not expect CalFarm employees to disclose to him the specifics of the sale to Nationwide during his interviews or subsequent negotiations. However, Mullins believed someone should have cautioned him that "there was something afoot," something that could severely impact his job. Mullins admitted he did not know whether or not Adams knew of the impending sale at the time of Mullins's interview on January 8, 1999.

Westley Heyward, the CalFarm president and chief executive officer at the time of the sale, testified he became aware of the impending sale in November or December of 1998. Heyward did not interview Mullins. On January 19, 1999, Heyward informed his staff of the sale. He did not inform Adams of the sale prior to January 19, 1999. Heyward never spoke with Klein.

Adams, the CalFarm attorney in charge of claims, testified. He stated he heard no gossip or rumor of the impending sale prior to learning of it on January 19, 1999. Adams did not recall any questions from Mullins during his interview about job security.

During a due diligence meeting attended by CalFarm and Nationwide executives on January 26, 1999, Adams broached the subject of Mullins's hiring. Adams asked if they should hire

Mullins "in light of the sale or the potential sale." He also inquired, "Do we have the right to tell Mr. Mullins anything?" Nationwide executives told Adams to bring Mullins "on board." Adams decided to hire Mullins, reasoning: "Whatever happens, happens."

Adams also testified there was no reason he could not have told Mullins there was "something on the horizon" for the company. In retrospect, Adams stated he probably should have waited to hire Mullins.

The recruiter, Klein, testified he provided numerous placements at CalFarm. His contacts within the company stretched from the mailroom to Adams.

In December 1998 Klein heard rumors that Nationwide was considering purchasing CalFarm.[3] However, Klein assured Mullins there was no truth to the rumors about a CalFarm sale.[4] He told

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[3] At trial, Klein was asked: "Q. Isn't it true in December of 1998, you heard rumors on the street that Nationwide was kind of looking at CalFarm? [¶] A. . . . [¶] Yes, I believe we did hear some rumors out there."

[4] After some equivocal testimony by Klein, the following deposition testimony was read into the record: "Question. Mr. Fine. [*Sic.*] Talking about February 22nd? [¶] The Witness [Klein]: I've given that a lot of thought, tried to go back through my notes. [¶] I don't recall [Mullins] ever asking me anything about if CalFarm was being sold, to merge. [¶] I do believe, though, at one point in our first conversation that I had told him about rumors on the street, you know, that CalFarm or Zenith, you know -- You know, for the last couple of years, there have been some rumors on the street of, you know, possible sale, but we haven't seen any truth to it. [¶] Question. So you let him know that as far as you knew,

Mullins that CalFarm had very low turnover and was a good company to work for.

Klein learned of the actual sale on February 22, 1999. After CalFarm revealed the sale, Klein reassured Mullins, telling him the new company was "solid" and unlikely to break apart. In numerous conversations with Mullins, he cautioned the new employee not to overreact and "jump ship." Adams told Klein not to worry about Mullins's job because the bosses approved the hiring.

Lisa Smeriglio, CalFarm's human resources director, testified that prior to February 22, 1999, she had heard rumors CalFarm might be for sale. She possibly heard these rumors from Klein.

Nationwide's Purchase of CalFarm

In late 1998 Nationwide informed CalFarm's parent company that it might be interested in acquiring the insurance company. On November 2, 1998, the companies executed a confidentiality agreement regarding the exchange of information necessary to explore a potential acquisition.

Heyward informed CalFarm executives of the sale at a January 19, 1999, meeting. Heyward also negotiated two-year contracts on behalf of top executives, including himself and Adams. Under the contracts, executives would receive two years' pay if they were terminated. Heyward explained information

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there was no truth to any of those rumors? [¶] Answer. Correct."

about the sale was extremely confidential. Heyward testified no promises were made that CalFarm would operate as a stand-alone company after the sale.

A number of CalFarm employees, including several who interviewed Mullins on January 8, 1999, testified they learned of the sale for the first time when Heyward made the public announcement on February 22, 1999. However, Adams and several other executives learned of the sale at the earlier January 19, 1999, meeting.

At trial, both sides presented expert testimony as to the industry standard on disclosing confidential information to potential applicants during the hiring process. Defendants' expert testified standard procedure in the industry was to not disclose a potential sale to an applicant. Mullins's expert testified it was an acceptable practice to inform interviewees about potential sales that might affect their employment. Another of Mullins's experts provided a series of options a company has during sale or merger negotiations: instituting a hiring freeze, delaying the interview process, asking the applicant to sign a confidentiality agreement, or providing a severance program.

The jury found defendants violated section 970 and awarded Mullins $1.1 million in economic and $200,000 in emotional distress damages. The court doubled the award under section 972. The jury found for defendants on the remaining causes of action. However, as to every cause of action, the jury found CalFarm made material misrepresentations to Mullins.

Defendants filed a motion for judgment notwithstanding the verdict. Defendants argued neither their employees nor agents had made a knowingly false representation as required by section 970. In opposition to the motion, Mullins argued Klein falsely stated the rumor of a potential sale of CalFarm was not true. According to Mullins, Klein represented he had the "inside scoop" on the inner workings of CalFarm but told Mullins no sale was in the works.

The court denied the motion, finding: "[T]he most significant issue here . . . is . . . whether a knowing failure to disclose a material fact, as opposed to an affirmative statement amounting to a knowingly false representation, is sufficient to support a finding of liability under . . . [s]ection 970. [¶] And I don't believe that there is any case one way or the other that specifically answers that question and I think that leaves us with just the language of the statute. [¶] I am of the view that in the circumstances of this particular case, that the Defendants had a duty to disclose the potential sale of CalFarm to the Plaintiff before making the job offer because, number one, there was a special relationship between the Defendants and Plaintiff as employer and potential employee. [¶] Secondly, there is substantial evidence that the Plaintiff had specifically inquired about a potential sale of the company before accepting the job offer. [¶] Third, there's substantial evidence that the Plaintiff was told that there was no sale or merger of the company in the works at this time. [¶] And fourth, there is substantial evidence that the Defendants knew of the potential or actual sale before the job offer was made, and Defendants knew that this information was not known to Plaintiff or not readily available to the Plaintiff. [¶] I note that the language of Labor Code Section 970 does speak in terms of a knowingly false representation which may imply the need for an affirmative statement as opposed to . . . a statement to disclose. [¶] However, I find that the purpose of this statute is to prevent and punish fraudulent conduct inducing someone out-of-state to move to California for employment. [¶] And . . . to limit liability to an affirmative knowingly false representation . . . as opposed to a knowing failure to disclose a material fact that has already been the subject of a question from Plaintiff, I believe that would undermine the whole purpose of the statute."

The court went on to find that if section 970 required an affirmative knowingly false representation, substantial evidence also supported the verdict on that basis. The court found Klein told Mullins that he had contacts at CalFarm from the mailroom to the chief executive officer and that Klein's job was to know what was going on at the company. Klein told Mullins no sale was in the works. The court concluded: "And that statement that there was no sale or merger in the works at this time was a knowingly false representation in view of the fact that Mr. Klein testified that in December of 1998, he had heard rumors of a potential sale or of merger negotiations occurring and that those negotiations specifically involved CalFarm and Nationwide."

Following entry of judgment, defendants filed a timely notice of appeal.

DISCUSSION

I. SECTION 970

Section 970 states: "No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either: [¶] (a) The kind, character, or existence of such work[;] [¶] (b) The length of time such work will last, or the compensation therefore; [¶] (c) The sanitary or housing conditions relating to or surrounding the work; [¶] (d) The existence or nonexistence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer and the persons then or last engaged in the performance of the labor for which the employee is sought."

The Legislature enacted section 970 to protect migrant workers from abuses by unscrupulous employers, especially abuses involving false promises made to induce migrant workers to move in the first instance. (*Tyco Industries, Inc. v. Superior Court* (1985) 164 Cal.App.3d 148, 155.) However, section 970 is not restricted in application to farm labor or other mass hiring situations. (*Seubert v. McKesson Corp.* (1990) 223 Cal.App.3d 1514, 1522.)

Under section 972, any person who violates section 970 is liable for double damages resulting from such misrepresentations.

II. ACCRUAL OF CAUSE OF ACTION

Defendants argue the trial court erred in finding Mullins's cause of action under section 970 accrued one year from his date of termination. Instead, defendants contend the one-year statute of limitations on the section 970 claim began to run as of the date Mullins learned of the alleged fraud. We independently review the trial court's judgment on questions of law. (*Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794.)

In denying defendants' motion for summary adjudication on the section 970 cause of action, the trial court found "no cause of action can accrue until plaintiff incurred damages. Plaintiff did not incur damages until the date of his termination, July 28, 1999. Under California law, workers' claims against employer for violating [section 970] . . . accrued on date they were discharged, not on date when they became aware of falsity of employer's representation."

Both the trial court and Mullins cite *Aguilera v. Pirelli Armstrong Tire Corp.* (9th Cir. 2000) 223 F.3d 1010 (*Aguilera*) for the proposition that section 970 claims begin to run on the date of the employee's termination.

In *Aguilera*, employees hired as replacement workers sued their former employer for fraud under section 970. The employees claimed the employer promised them they would be permanent employees and would not be replaced by rehired strikers. When the strike settled, the employer rehired the striking employees and fired the replacement workers. (*Aguilera*, *supra*, 223 F.3d at pp. 1012-1014.)

The district court found the Labor Code section 970 claims were governed by the one-year statute of limitations under Code of Civil Procedure section 340. (*Aguilera*, *supra*, 223 F.3d. at p. 1018.) The employer argued the section 970 claims accrued when plaintiffs were first made aware of the employer's misrepresentations: on the date the first replacement workers were laid off. The plaintiff employees argued the cause of action accrued upon their own layoffs. (*Ibid.*)

The Ninth Circuit agreed with the plaintiffs and held the plaintiffs' claims accrued on the date of their own discharge. The appellate court relied on two California Supreme Court cases: *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 491 (*Romano*) and *Mullins v. Rockwell Internat. Corp.* (1997) 15 Cal.4th 731, 738 (*Mullins*). (*Aguilera*, *supra*, 223 F.3d at p. 1018.) In both cases, the Supreme Court held the statute of limitations for wrongful termination of employment, based on various contract, statutory, and tort theories, accrues at the time of actual termination, even when the employer has issued an unequivocal notification of termination earlier. Neither case relied on by *Aguilera* considered section 970.

The court in *Mullins* explained its rationale: "The statute of limitations should not force the employee to institute premature legal proceedings, whether at the time the employer announces an intention to fire the employee, or at the time the employer begins to coerce a resignation by creating or knowingly permitting intolerable working conditions. . . . [A] rule providing that the statute of limitations begins to run on the date of actual termination of employment has the virtue of certainty. In contrast, it would be difficult to establish with certainty the event or events that set the statute of limitations running under the rule proposed by [the employer]." (*Mullins*, *supra*, 15 Cal.4th at p. 741.)

We are not persuaded by defendants' various attempts to distinguish *Aguilera.* Defendants contend the employer in *Aguilera* represented that the plaintiffs would be permanent hires. Here, defendants made no such representation to Mullins. Defendants also point to the collective bargaining agreement in *Aguilera*, arguing in contrast that Mullins operated as an at-will employee. Finally, defendants contend the employees in *Aguilera* discovered the alleged fraud only when they were fired. However, defendants argue, Mullins found out about the alleged fraud four months before he was fired, when defendants announced the impending sale.

None of these alleged distinctions renders the rule of *Aguilera* inapplicable in the present case. Neither the type of misrepresentation alleged nor the presence or absence of a collective bargaining agreement undercuts the basic rationale of *Aguilera*, *Romano*, and *Mullins*.

In addition, we find defendants' final argument does not square with the facts of *Aguilera*. In *Aguilera*, the plaintiffs became aware of the employer's misrepresentations *when* other replacement workers were fired. The employer in *Aguilera* argued these prior firings triggered the statute of limitations. The court rejected this argument, finding the cause of action accrued on the day the employer fired the plaintiffs themselves. Here, we find the trial court correctly found Mullins's section 970 cause of action accrued the day he was terminated by defendants.

III. SUFFICIENCY OF THE EVIDENCE OF KNOWING MISREPRESENTATION

Defendants argue that, even viewing the evidence in the light most favorable to Mullins, no substantial evidence supports a finding that CalFarm made a knowing misrepresentation to Mullins. Defendants contend the record contains no evidence upon which the jury could have reasonably concluded that Klein, in telling Mullins that rumors of an impending merger or sale of the company were unfounded, made a knowing misrepresentation to Mullins. In addition, defendants label the trial court's finding that Klein's statements constituted a knowing misrepresentation, in denying defendants' judgment notwithstanding the verdict motion, "illogical and contrary to the undisputed facts." We disagree.

Under the substantial evidence rule, we have no power to pass on the credibility of witnesses, to attempt to resolve conflicts in the evidence, or to determine where the weight of the evidence lies. Rather, we accept as true the evidence most favorable to the order or judgment and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135.)

At trial, Klein testified he placed 30 to 50 employees at CalFarm over several years. Klein described his contacts at CalFarm as stretching from the mailroom to the top of the organization. He noted part of his job was to know what was going on within the company.

Mullins testified Klein touted his experience and contacts with CalFarm when he approached Mullins about the position with the company. Klein told Mullins he knew what was going on at CalFarm.

Klein testified that as early as December 1998, he had heard Nationwide was considering acquiring CalFarm. Klein could not recall the source of his information.

Concerned about job security, Mullins asked Klein directly during their early discussions in December 1998 whether CalFarm was involved in any merger or sale discussions. Klein told Mullins there was no sale or merger in the works. Klein also told Mullins he had heard rumors of a potential sale several years before, but they had proved false.

Mullins told Klein he wanted this to be his last job and he wanted to work another 15 years and retire. Klein responded that Mullins could expect a long and secure future at CalFarm; CalFarm took care of its employees.

CalFarm's human resources director also testified she heard "scuttlebutt" about a potential sale prior to the February 22, 1999, announcement. She stated she might have heard this information from Klein.

Defendants claim Klein's statements amount to nondisclosure, not affirmative misrepresentations. According to defendants: ". . . Klein truthfully testified that he had heard rumors a few years back and that he could not confirm any rumors of a CalFarm sale. Viewing the evidence in the light most favorable to [Mullins], [Mullins] has only provided evidence that Klein *failed to disclose* more recent rumors of a potential CalFarm sale in December 1998. That is not evidence, let alone substantial evidence, that Klein made an affirmative and knowing misrepresentation."

We are not persuaded by defendants' attempts to gloss over Klein's comments to Mullins regarding the stability and solidity of the employment offered by CalFarm and facilitated by Klein. Mullins, an aging employee considering a major career change involving a transcontinental relocation, attempted to make an informed decision about the CalFarm position. Mullins directly asked CalFarm's recruiter, Klein, whether the company might undergo a sale or merger, two situations that would directly impact the stability of his new position.

Klein, aware of talk about a sale of CalFarm involving Nationwide in December 1998, told Mullins no sale or merger was in the works. Klein did not fail to disclose the talk or rumors of an impending sale; Klein specifically told Mullins no sale or merger was in the works. Klein, who touted his contacts with CalFarm and his knowledge of the company's inner workings, chose not to tell Mullins he had heard information about a potential sale of CalFarm to Nationwide. Instead, he reassured Mullins that CalFarm would provide stable employment and affirmatively denied any sale was in the works.

Given the testimony of both prospective employee Mullins and job recruiter Klein, the jury had before it sufficient evidence to find Mullins was induced to accept the position "by means of knowingly false representations" in violation of section 970. Klein had heard talk about a merger between the two companies, yet he denied any such knowledge to Mullins. Klein's statements to the apprehensive Mullins were not merely a failure to disclose, but affirmative statements that misled Mullins in his attempt to make an informed decision about a major career change.[5]

V. SECTION 970 "AT-WILL" EMPLOYMENT

Defendants make two claims connected to Mullins's at-will employment with CalFarm. First, defendants contend Mullins's

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[5] Since we find sufficient evidence to support the jury's finding of a knowingly false representation, we do not consider defendants' arguments concerning defendants' failure to disclose as a basis for liability under section 970.

section 970 claim is foreclosed to the extent Mullins is seeking to hold CalFarm liable for any representations concerning the duration of his employment. In addition, defendants argue the potential CalFarm/Nationwide sale was not material under section 970. According to defendants, Mullins could not rely on any representations considering the potential duration of his employment because he accepted the position as an at-will employee.

In support of their first argument, defendants cite *Slivinsky v. Watkins-Johnson Co.* (1990) 221 Cal.App.3d 799 (*Slivinsky*). In *Slivinsky*, an employee sued for breach of contract and fraud after her firing based on oral representations of indefinite employment. The Court of Appeal upheld summary judgment in favor of the employer. The court found the employee's reliance on promises of indefinite employment unjustified because they contradicted her at-will employment agreement. (*Id.* at pp. 806-807.)

Defendants acknowledge *Slivinsky* does not involve a section 970 claim but argue "that fact is irrelevant. The principle discussed in Slivinsky, which involved allegedly fraudulent representations with respect to the duration of the plaintiff's employment, would apply with equal force in a § 970 case. Labor Code § 970 is simply a limited, statutory fraud cause of action that provides a double-damages penalty for its violation."

We disagree with defendants' characterization of section 970. Section 970, subdivision (b) prohibits employers from persuading an employee to relocate and accept employment by means of knowingly false representations concerning the length of time the employment will last. Mullins does not dispute he was hired as an at-will employee. Instead, Mullins alleges CalFarm's agent Klein induced him to accept employment by knowingly misrepresenting the current and future status of the company. Klein's misrepresentation tipped the balance in favor of Mullins's resigning a secure position and relocating his family.

We find *Lazar v. Superior Court* (1996) 12 Cal.4th 631 (*Lazar*) instructive. In *Lazar*, an employee filed suit under section 970, contending he had accepted employment based on verbal representations of continued employment, the company's strong financial base, and pay raises. (*Lazar*, *supra*, 12 Cal.4th at pp. 635-636.) The representations by the employer proved completely false: the company was financially in dire straights, a merger was in the works that would eliminate the employee's position, and company policy severely limited pay raises. (*Id.* at p. 636.) The employer also secretly intended to treat the employee as if he were an at-will employee, subject to termination without cause. (*Ibid.*)

The employee resigned his position in New York and accepted the employment offer. After relocating his family and performing in an exemplary manner, the company fired the employee for cause. (*Lazar*, *supra*, 12 Cal.4th at pp. 636-637.) The Supreme Court found the employee could plead a cause of action for fraud: "Lazar's [employee's] reliance on Rykoff's [employer's] misrepresentations was truly detrimental, such that he may plead all the elements of fraud. Lazar's employer, Rykoff, did *not* have the power to compel Lazar to leave his former employment. Rykoff's misrepresentations were made before the employment relationship was formed, when Rykoff had no coercive power over Lazar and Lazar was free to decline the offered position. Rykoff used misrepresentations to induce Lazar to change employment, a result Rykoff presumably could *not* have achieved truthfully (because Lazar had required assurances the Rykoff position would be secure and would involve significant increases in pay). Moreover, Lazar's decision to join Rykoff left Lazar in worse circumstances than those in which he would have found himself had Rykoff not lied to him. (Allegedly, Lazar's secure living and working circumstances were disrupted, and Lazar became the employee of a financially troubled company, which intended to treat him as an at-will employee.)" (*Id.* at pp. 642-643.)

In the present case, Mullins was hired as an at-will employee. However, CalFarm recruited him by painting a glowing picture of the company's stable future and assuring him no major changes were in the works. This misrepresentation induced Mullins to change employment, much as the misrepresentations in *Lazar* induced the employee to relocate. Regardless of his at-will status, Mullins sought, and was denied, the information he needed to make an informed decision as to the stability of his future employment with CalFarm.

In a related argument, defendants also contend the CalFarm/Nationwide sale was not material under section 970. Section 970 prohibits an employer from inducing a person to accept employment by means of knowingly false representations concerning "[t]he length of time such work will last . . . ." (§ 970, subd. (b).) According to defendants, Mullins cannot rely on representations concerning the length of time such work will last since he was hired as an at-will employee.

Again, Mullins's allegations centered on the misrepresentations as to the stability of CalFarm as a prospective employer, information needed by a prospective employee faced with a decision about accepting a job offer. Mullins does not contend he was misled as to his at-will status. Klein's misrepresentation induced Mullins to accept at-will employment with a firm touted as secure and stable, but which was in reality on the verge of a major shake-up. We find the misrepresentation material under section 970.

DISPOSITION

The judgment is affirmed. Mullins shall recover costs on appeal.

RAYE, J.

We concur:

DAVIS, Acting P.J.

MORRISON, J.